

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**
CHARLOTTESVILLE DIVISION

McCLAIN & CO., INC.,

Plaintiff,

v.

MARK DAVID CARUCCI, and
MPT RENTALS, INC.,

Defendants.

CASE NO. 3:10-cv-00065

ORDER

JUDGE NORMAN K. MOON

This matter is before the Court upon Defendants' Motion to Dismiss, filed January 7, 2011 (docket no. 12). In this action, Plaintiff McClain & Co., Inc. is suing Mark David Carucci, for breach of contract (count one), and for conversion (count two). Plaintiff is also suing MPT Rentals, Inc. for tortious interference with contract (count three).

For the reasons set forth in the accompanying memorandum opinion, Defendants' Motion to Dismiss is hereby GRANTED in part and DENIED in part, as follows:

- The motion to dismiss the breach of contract claim (count one) is DENIED.
- The motion to dismiss the conversion claim (count two) is DENIED.
- The motion to dismiss the tortious interference with contract claim (count three) is GRANTED without prejudice.

Leave to amend the complaint is granted as to count three. Plaintiff shall have an additional fourteen days, beginning from the date of this order, to amend the complaint.

The Clerk of the Court is hereby directed to send a certified copy of this order to all counsel of record.

It is so ORDERED.

Entered this 4th day of May, 2011.



NORMAN K. MOON
UNITED STATES DISTRICT JUDGE